

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

C&D TECHNOLOGIES, INC.,

Defendant.

CIVIL ACTION NO.

1:03-cv-413- DFH-TAB

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this matter seeking civil penalties and injunctive relief pursuant to the Clean Water Act, 33 U.S.C. § 1251 et seq. (the "CWA"), relating to the operation by Defendant, C&D Technologies, Inc. ("C&D") of its battery manufacturing plant in Attica, Indiana (the "Facility").

B. The parties enter into this Consent Decree to resolve all matters alleged in the Complaint, and listed in the post complaint violations set forth in Exhibit A, and any post complaint violations for failure to sample, and to assure compliance with the provisions of the CWA that Plaintiff has alleged in its Complaint that C&D has violated. The Parties agree that by entering into this Consent Decree, C&D does not admit the truth of any allegation in the

Complaint.

C. The parties to this Consent Decree agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the parties in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the parties, and that this Consent Decree is fair, reasonable, consistent with applicable law, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court also has personal jurisdiction over C&D. Venue is proper in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c).

2. Solely for the purposes of this Consent Decree and the underlying Complaint, C&D waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. C&D shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

3. This Consent Decree applies to and is binding upon the United States and upon C&D, its successors and assigns, and its officers, directors, and employees in their capacities as such, and all other persons and entities as provided for by Fed. R. Civ. P. 65(d). In any action to enforce the terms of this Consent Decree, C&D shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees or any other persons or entities

provided for by Fed. R. Civ. P. 65(d) to take any actions necessary to comply with the provisions hereof.

4. No change in ownership of the Facility (or any portion thereof) shall in any way alter C&D's obligations or rights under this Consent Decree. Similarly, no change in corporate status or ownership of C&D shall in any way alter C&D's obligations or rights under this Consent Decree. Effective from the date of lodging of this Consent Decree, at least 30 days prior to selling or transferring ownership or operation of the Facility (or any part thereof) to any other person, C&D shall provide a copy of this Consent Decree to such prospective successor owner or operator, and shall simultaneously verify to the United States in writing, in the manner set forth in Section XII (Notices and Submissions), that a copy of the Consent Decree has been provided to such prospective successor owner or operator. The requirements of this Paragraph shall terminate at such time as termination of the Consent Decree occurs pursuant to Section XVI (Termination).

IV. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA, or in regulations promulgated thereunder, shall have the meanings assigned to them in such definitions. ~~In addition, the following definitions shall apply~~ to the terms used in this Consent Decree:

"Administrative Order" or "AO" means the Administrative Order issued to C&D by EPA on September 29, 1997, attached hereto as Exhibit C.

"C&D" means C&D Technologies, Inc., incorporated under the laws of the State of Delaware.

“Consent Decree” shall mean this Consent Decree.

“Consent Decree Stormwater Concentration Limits” shall mean: (a) pH instantaneous maximum value of 6.0 to 9.0 standard units; (b) Total Suspended Solids daily maximum of 70 mg/l and monthly average maximum of 35 mg/l; (c) oil and grease daily maximum of 5 mg/l; and (d) Lead daily maximum of 2.0 mg/l and monthly average maximum of 1.0 mg/l.

“CWA” means the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., also known as the Clean Water Act.

“Day” means a calendar day. In computing any period of time for the submittal of reports under this Consent Decree, if the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall be extended until the close of business of the next day that is not a Saturday, Sunday or Federal holiday.

“DMR” means IDEM’s Discharge Monitoring Report.

“EPA” means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Facility” means the battery manufacturing plant currently owned and operated by C&D, located at 200 West Main Street, Attica, Indiana.

“IDEM” means the Indiana Department of Environmental Management and any successor departments or agencies of the State of Indiana.

“Interest” means interest at the rate specified for a money judgment in a civil case recovered in a district court pursuant to 28 U.S.C. § 1961.

“NPDES Permit” means National Pollution Discharge Elimination System (“NPDES”) Permit For Storm Water Discharges Associated With Industrial Activity, No. IN 0049093, issued

by IDEM to C&D and made effective on September 1, 2005, or such permit as is in effect under the CWA on the relevant date to govern the Facility's discharges from outfalls via storm sewers to the Wabash River.

"Paragraph" means a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" means the United States and the C&D.

"Plaintiff" means the United States.

"Post Complaint Violations" means alleged violations of the CWA set forth in Exhibit A relating to operations by C&D at the Facility.

"Section" means a portion of this Consent Decree identified by a roman numeral.

"United States" shall mean the United States of America.

V. CWA COMPLIANCE

6. Within 30 days after the date of entry of this Consent Decree, C&D shall submit to EPA for approval a Compliance Work Plan for completing implementation of the compliance measures required by this Consent Decree as described in Subparagraphs 7.a.(2)(A) and (B); and 7.b.(1)(A), (B), (C), (D) and (E) herein. The Compliance Work Plan and any supplement thereto shall provide a description of and a schedule for the actions required by this Consent Decree.

The Compliance Work Plan shall be prepared by a licensed professional engineer, and all work shall be conducted pursuant to the Compliance Work Plan and shall be performed or certified as complete by a licensed professional engineer. EPA may approve, disapprove, require revisions to, or modify the Compliance Work Plan or any supplement thereto. If EPA requires revisions, C&D shall submit a revised Compliance Work Plan or supplement thereto, incorporating EPA's

revisions and no other changes, within 14 days of receipt of EPA's notification of required revisions. C&D shall implement the Compliance Work Plan or supplement thereto as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved or approved with modifications, the Compliance Work Plan, the schedule, and any subsequent modifications shall become a fully enforceable part of this Consent Decree. C&D shall not commence compliance work under the Compliance Work Plan at the Facility without prior written EPA approval of the Compliance Work Plan.

7. a. Pretreatment Compliance Measures

(1) Operation of a Wastewater Pretreatment System. C&D shall operate and maintain an appropriate process wastewater pretreatment system so as to ensure C&D's consistent compliance with effluent toxicity discharge limitations for Facility Outfall 101 specified in the AO. In order to determine compliance with this paragraph C&D shall take representative process wastewater composite samples for analysis from a location downstream from its process wastewater storage tanks as frequently as required by the AO.

(2) Additional Pretreatment Compliance Measures

(A) Beginning 30 days after the date of approval of the Compliance Work Plan, C&D shall measure the daily volume of process wastewater at the end of process for a period of one year. Within 30 days of completing the process wastewater volume measurements, C&D shall report the volume of process wastewater and the amount of lead used for wet and dry charge batteries manufactured within the same one-year period expressed as an average daily amount.

(B) Within 30 days of the date of approval of the Compliance

Work Plan, C&D shall develop, submit to EPA, and implement a slug loading control plan to eliminate or minimize the accidental spill or slug discharge of pollutants into the Attica POTW.

b. NPDES Compliance Measures.

(1) C&D's NPDES Storm Water Monitoring System.

(A) Within 90 days of approval of the Compliance Work Plan, C&D shall conduct testing of each of its storm water domestic and industrial sewers, pipes, or other conveyances to determine whether there are any interior or exterior connections or other sources to the storm water collection system and report the result of this testing to EPA.

(B) Within 90 days of approval of the Compliance Work Plan, C&D shall conduct testing to determine the locations where each roof drain is piped to and their connection to any domestic or industrial collection system and report the results, including a location map, to EPA.

(C) Within 150 days of the approval of the Compliance Work Plan, C&D shall complete any necessary physical changes to the facility to ensure that all storm water connections identified as a result of the testing referenced in the preceding subparagraphs 7.b.(1)(A) and (B) are being properly monitored and diverted through one of the five permitted storm water outfalls.

(D) Within 150 days of the approval of the Compliance Work Plan, C&D shall modify, supplement, or install flow measurement and sampling devices in all storm water sampling locations so as to be consistent with those sampling and flow measurement devices described in U.S. EPA's "NPDES Storm Water Sampling Guidance Document," Chapter 3, Section 3.2 and 3.2.1, dated July 1992, and report the results of the modifications to the

sampling locations, including a location map, to EPA.

(E) Within 30 days after completion of all modifications to the Facility's sampling program as required by the Compliance Work Plan, and continuing for 12 consecutive months thereafter, C&D shall sample and analyze for lead at storm water outfalls 001, 002, 003, 004, and 006, as identified in the NPDES Permit, during every measurable (greater than 0.1 inch) precipitation event which occurs at least 72 hours from the previous measureable precipitation event, and during equivalent storm water discharge from snow melt runoff, surface runoff, and drainage. The sampling protocol for these samples shall be as follows:

A grab sample shall be taken during the first thirty (30) minutes of the discharge and a flow-weighted composite shall be taken for the entire event or for the first three hours of the event. A flow-weighted composite sample may be taken with a continuous sampler that proportions the amount of sample collected with the flow rate or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire event or for the first three (3) hours of the event with each aliquot being at least 100 milliliters and collected with a minimum period of fifteen minutes between aliquot collections. The composite must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the discharge flow at the time of sampling or the total discharge flow since the collection of the previous aliquot.

(2) Reporting.

(A) C&D shall submit reports detailing the results of the

sampling and analysis program described in subparagraphs 7.a.(1) and (2); and 7.b.(1)(E) above to EPA on a monthly basis on DMR forms accompanied by a modified cover letter, postmarked on or before the 28th day of each month. These reports shall include the monthly average of lead discharged from each storm water outfall. Monthly average shall mean the total mass or flow-weighted concentration of all daily discharges during a calendar month on which daily discharges are sampled or measured, divided by the number of daily discharges sampled and/or measured during such calendar month. In the instance where only one (1) sample is taken during the calendar month, the monthly average would be equal to the value of that sample; i.e., the monthly average would be equal to the daily maximum concentration of the single sample taken for the calendar month.

(B) C&D shall submit a copy of the 2005 and 2006 Storm Water Pollution Prevention Plan Annual Reports to EPA at the same time they are submitted to IDEM pursuant to the requirements of C&D's NPDES Permit, Part I, Section B.

(C) C&D shall submit monthly to EPA its daily inspection forms as required by the NPDES Permit, Stormwater Pollution Prevention Plan, Attachment 3.

(D) C&D shall submit a quarterly report which shall detail all of C&D's compliance activities as required in the Consent Decree and Compliance Work Plan herein until EPA stipulates that all compliance activities have been successfully completed.

VI. CIVIL PENALTY FOR PAST VIOLATIONS

8. Within 30 days of the date of entry of this Consent Decree, C&D shall pay to the United States:

- a. A civil penalty in the amount of \$1,600,000.00 plus Interest accrued from

30 days after the date this Consent Decree is entered by the Court.

b. C&D shall make the payments provided in this Section by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice account in accordance with current EFT procedures, referencing the above-captioned case name and the assigned civil action number, as well as DOJ Case No. 90-5-1-1-06996. C&D shall make payment in accordance with instructions to be provided to C&D by the Financial Litigation Unit of the Office of the United States Attorney for the Southern District of Indiana after the lodging of this Consent Decree, and shall advise the Financial Litigation Unit at the time payment is being made. Any payments received by the Department of Justice after 3:00 p.m. Eastern Time shall be credited on the next business day. C&D shall also send notice to EPA and DOJ that payment has been made in accordance with Section XII (Notices and Submissions).

9. Civil penalties paid pursuant to this Consent Decree shall not be deductible for purposes of Federal or state taxes.

VII. EFFECT OF SETTLEMENT AND RESERVATIONS OF RIGHTS

10. The Parties agree that this Consent Decree resolves the civil claims for violation of water quality standards and for injunctive relief alleged in the Complaint filed by the United States, the Post Complaint Violations, and any post complaint violations for failure to sample, all through the date of lodging of this Decree. The Consent Decree in no way affects or relieves C&D of any responsibility to comply with any federal, state, or local law or regulation. The Parties agree that C&D is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations,

or permits.

11. The United States reserves the right to file a civil action for statutory penalties or injunctive relief against C&D for any violations of the Clean Water Act by C&D which occur after the date of lodging of this Consent Decree and any such violations occurring prior to that date that are not specifically alleged as Claims for Relief in the Complaint, post complaint violations for failure to sample, or set out as Post Complaint Violations in Exhibit A. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree. C&D reserves all of its legal and equitable rights, remedies, claims and defenses as to any and all matters not resolved by this Consent Decree, and in respect of enforcement of this Consent Decree.

12. The United States reserves the right to file a criminal action for statutory penalties or other criminal relief against C&D for any violations by C&D of the Clean Water Act or other applicable federal statutes.

13. This Consent Decree shall not limit any authority of EPA under any applicable statute, including the authority to seek information from C&D or to seek access to the property of C&D, nor shall anything in this Consent Decree be construed to limit the authority of the United States to undertake any action against any person, including C&D, in response to conditions that may present an imminent and substantial endangerment to the environment or the public health or welfare.

14. Each Party to this action shall bear its own costs and attorney's fees.

15. This Consent Decree is neither a permit nor a modification of existing permits under any federal, state, or local law, and in no way relieves C&D of its responsibilities to

comply with all applicable federal, state, and local laws and regulations.

VIII. STIPULATED PENALTIES

16. C&D shall be liable for payment to the United States of the following stipulated civil penalties for noncompliance with the requirements of this Consent Decree occurring after the date of lodging of this Consent Decree:

a. \$1000 per day for any failure to achieve full and timely completion of any task or submittal required under Section V (Compliance Measures) or the Compliance Work Plan.

b. For any failure to comply with a discharge limitation specified by the Consent Decree Stormwater Concentration Limits or AO:

(1) For exceedance of daily limits per outfall:

(A) \$1000 for the first exceedance of a specified discharge limitation at a particular monitoring point;

(B) \$3000 for the second exceedance of the same specified discharge limitation at a particular monitoring point; and

(C) \$5000 for the third exceedance and each subsequent exceedance of the same specified discharge limitation at a particular monitoring point.

(2) For exceedance of monthly average limits:

(A) \$2000 for the first exceedance of a specified discharge limitation at a particular monitoring point;

(B) \$4000 for the second exceedance of the same specified discharge limitation at a particular monitoring point; and

(C) \$6000 for the third exceedance and each subsequent exceedance of the same specified discharge limitation at a particular monitoring point.

(3) (A) Stipulated penalties shall be assessed under both Subparagraphs 16.b.(1) and 16.b.(2) where the Facility exceeds both a daily limit and a monthly average limit for a discharge limitation during a given month. However, for purposes of any assessment of stipulated penalties under this consent decree only, in the event that only one measurable precipitation event or equivalent storm water discharge from snow melt runoff, surface runoff, or drainage, as described in Subparagraph 7.b.(1)(E) herein occurs during any calendar month, and the resulting storm water discharge exceeds both monthly average and daily discharge limitations, then stipulated penalties shall be assessed for only the daily discharge limitation exceedance pursuant to Subparagraph 16.b.(1). Also for purposes of assessment of stipulated penalties for violation of monthly average discharge limitations under this consent decree Subparagraph 16.b. only, an exceedance of a monthly average discharge limitation shall constitute one exceedance, not 30 exceedances.

d. \$500 per day for failure to submit a timely and adequate compliance report as required by 40 C.F.R. Section 403.12(e), the AO, and subparagraph 7.b.(2) of this Consent Decree, for its Attica Facility.

17. All stipulated penalties shall begin to accrue on the day after complete performance is due or the day noncompliance occurs, and shall continue to accrue through the day complete performance occurs or the date complete correction of noncompliance occurs. Stipulated penalties shall accrue regardless of whether EPA has made a demand for payment, but shall not be payable until a written demand for payment is made by EPA, which shall generally

describe the noncompliance for which stipulated penalties are demanded.

18. All stipulated penalties shall be due and payable to the United States within 20 days of C&D's receipt from EPA of a demand for payment of the penalties, except as otherwise provided by Paragraph 34 in the event C&D invokes the dispute resolution procedures under Section X (Dispute Resolution). All payments to the United States under this Section shall be made by certified or cashier's check(s) made payable to the "Treasurer, United States of America," shall be tendered to the Financial Litigation Unit of the Office of the United States Attorney for the Southern District of Indiana, and shall be accompanied by a letter indicating that the payment is for stipulated penalties under this Consent Decree, and referencing the case name and civil action number, DOJ Case No. 90-5-1-1-06996, and C&D's name and address. Copies of the transmittal letter and check(s) shall be sent to the United States in the manner provided by Section XII (Notices and Submissions).

19. If C&D fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. C&D shall pay Interest on the unpaid balance, which shall begin to accrue on the day after payment is due.

20. Nothing herein shall preclude the simultaneous accrual of penalties for separate violations of this Consent Decree.

21. The payment of penalties shall not alter in any way C&D's obligation to complete the performance of any tasks required under this Consent Decree.

22. Nothing herein shall preclude the United States from seeking additional legal or equitable relief for violation of this Consent Decree or the CWA, including but not limited to injunctive relief, and civil and criminal sanctions.

23. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

IX. FORCE MAJEURE

24. A “force majeure event,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of C&D (including its contractors, consultants, agents, and employees) that could not have been foreseen or prevented and that delays or prevents the performance of any obligation under this Consent Decree, despite C&D’s best efforts to fulfill the obligation. The requirement that C&D exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (i) as it is occurring, and (ii) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Increased costs of complying with this Consent Decree or changed economic circumstances shall not constitute a force majeure event under this Consent Decree.

25. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, C&D shall notify the individuals specified in Section XII (Notices and Submissions) no later than seven (7) days after C&D knew or should have known that the event might cause a delay. Within fourteen (14) Days thereafter, C&D shall provide EPA a written explanation and description of: (i) the reasons for the delay, (ii) the anticipated duration of the delay, (iii) all actions taken or to be taken to prevent or minimize the delay, (iv) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay, and (v)

C&D's rationale for attributing such delay to a force majeure event, if C&D intends to assert such a claim. C&D shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure event. Failure to comply with the above-described requirements shall constitute a waiver of C&D's ability to assert that the relevant event is a force majeure event.

26. Notification of any delay, in and of itself, shall not extend the time allowed for satisfying any requirement under this Consent Decree.

27. If EPA determines that circumstances which cause or may cause delay is a force majeure event, EPA will issue C&D a written extension of the time for performance of the obligations under this Consent Decree that are affected by the force majeure event, affording C&D such time as is necessary to complete those obligations, taking into account the duration of the delay or anticipated delay due to the force majeure event.

28. If EPA and C&D cannot agree that a delay or failure has been caused by a force majeure event, or cannot agree on the length of an extension to account for a force majeure event, the dispute shall be resolved in accordance with Section X (Dispute Resolution) of this Consent Decree. In any such dispute resolution proceeding, C&D shall bear the burden of demonstrating that the delay has been caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that C&D complied with the requirements of Paragraphs 24 and 25.

X. DISPUTE RESOLUTION

29. Unless otherwise expressly provided for in this Consent Decree, the procedures

set forth in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree, including without limitation disputes regarding changes made by EPA to the Compliance Work Plan (Paragraph 6), C&D's performance of any of the activities required by Section V ("Compliance") or this Consent Decree, the timeliness of EPA actions required by this Consent Decree, and whether the conditions for termination of this Consent Decree have been met. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of C&D that have not been disputed in accordance with this Section.

30. Informal Negotiations. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute. Such Notice shall describe the issue in dispute, the outcome the Party believes is appropriate, and the basis for that Party's position and shall be submitted in the manner prescribed by Section XII (Notices and Submissions) of this Consent Decree.

31. Formal Dispute Resolution.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding on the Parties unless, within ten (10) days after the conclusion of the informal negotiation period, C&D invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including

but not limited to any factual data, analysis, evidence or opinion supporting that position, and any supporting documentation relied upon by C&D.

b. EPA shall compile and maintain an administrative record for any formal dispute. The administrative record shall include the Statement of Position submitted by C&D pursuant to the preceding Subparagraph (including all evidence and other materials submitted with such Statement of Position), and materials relied upon by EPA in deciding the dispute pursuant to the following Subparagraph.

c. The Director of the Water Division, EPA Region 5, (the "Director") will issue a final administrative decision in resolving the dispute based on the administrative record described in Subparagraph 31.b. above. This decision shall be binding upon C&D, subject only to the right to seek judicial review pursuant to Subparagraph 31.e. below

d. If the Director concurs with C&D's position, the Director shall so notify C&D in writing. If the Director does not concur with C&D's position, the Director shall so notify C&D in a written determination which summarizes the basis for the Director's decision. The Director's decision shall be considered binding on the Parties unless, within twenty-one (21) days after C&D's receipt of the Director's written determination, C&D files a notice of judicial appeal setting forth a description of the matter in dispute, and the efforts made by the parties to resolve it. The United States may file a response to the notice of judicial appeal.

e. In any judicial appeal of an EPA dispute resolution determination, C&D shall bear the burden of demonstrating that the Director's determination is arbitrary and capricious and otherwise not in accordance with law, based solely on the administrative record compiled and maintained by EPA in accordance with Subparagraph 31.b. herein.

32. Stayed Payment of Stipulated Penalties Pending Resolution of Dispute. Except as provided in subsection (d) of this Paragraph, the invocation of formal dispute resolution procedures under this Section shall not extend or postpone any obligation of C&D under this Consent Decree, but C&D's obligations to pay stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue during proceedings to resolve disputes under this Consent Decree until the following:

a. If the dispute is resolved by informal negotiations or by a decision of EPA that is not appealed to the District Court, accrued penalties determined to be owing shall be paid to EPA within twenty (20) days of C&D's receipt of a written demand for payment by EPA following the informal resolution or the receipt of EPA's decision.

b. If the dispute is appealed to the Court and EPA prevails in whole or in part, C&D shall pay all accrued penalties determined by the District Court to be owed to EPA within sixty (60) days of receipt of the Court's decision, except as provided in the following Subparagraph c.

c. If the District Court's decision is appealed by any party, C&D shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to C&D to the extent that it prevails.

d. In the event the formal dispute resolution procedures under this Section

are invoked in respect of any changes made by EPA to the Compliance Work Plan (Paragraph 6), the date upon which the dispute resolution procedures are finally concluded shall constitute the "date for approval of the Compliance Work Plan."

XI. ACCESS TO INFORMATION AND DOCUMENT RETENTION

33. Commencing on the date of lodging of this Consent Decree, C&D agrees to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times, and in accordance with the Facility's ordinary procedures for safety, to the Facility, and to allow such representatives to move about, without restriction, for the purposes of conducting any activity related to this Consent Decree, including but not limited to monitoring implementation, verifying any data or information submitted to the United States under this Consent Decree, and assessing C&D's compliance with this Consent Decree. This right of access is in addition to, and shall not limit, any access rights afforded by any law or regulation.

34. C&D shall follow the record retention policy attached as Exhibit B in respect of documents and information within its possession or control (or that of its contractors or agents) that relate to its (a) compliance with its NPDES Permit and the AO governing outfall 101; and (b) compliance with Section V (Compliance Measures) of this Consent Decree. C&D shall preserve such documents and information for at least one year after the termination date of this Consent Decree. Upon request, C&D shall make such documents available to EPA and shall also make available its employees, agents, or representatives with knowledge of relevant facts concerning its compliance with this Consent Decree.

a. C&D may assert business confidentiality claims covering part or all of the documents or written information submitted to the United States or any information that the

United States may obtain at the site under this Consent Decree, to the extent permitted by and in accordance with 40 C.F.R. Part 2. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B.

b. C&D may assert that certain documents and information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If C&D asserts such a privilege in lieu of providing documents, C&D shall provide the Plaintiff with the following: (1) the title of the document; (2) the date of the document; (3) the name and title of the author of the document; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document; and (6) the privilege asserted by C&D. No document or information created or generated to fulfill the requirements of the Consent Decree shall be withheld on the grounds that it is privileged.

XII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Consent Decree, written notice is required to be given or a plan, report or other submission is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree.

As to the United States:

For the Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-06996

Thomas E. Kieper, Esquire
Assistant United States Attorney
Southern District of Indiana
10 West Market Street, Suite 2100
Indianapolis IN 46204

For the EPA:

For non-CWA related matters

Larry L. Johnson, Esquire
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago IL 60604

and

For CWA Matters:

Chief, Water Enforcement
and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

As to C&D:

C&D Technologies, Inc.
1400 Union Meeting Road
Blue Bell, PA 19422
Attention: Vice President, General Counsel

With copies to:

C&D Technologies, Inc.
1400 Union Meeting Road
Blue Bell, PA 19422
Attention: Vice President Finance and Chief Financial Officer

and

Kenneth H. Inskeep, Esquire
Barnes & Thornburg LLP
11 S. Meridian St.
Indianapolis, IN 46204

36. C&Ds Certification of Notices and Submissions. All notices and submissions required by this Consent Decree to be submitted by C&D shall be certified by a responsible corporate official, and accompanied by the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted, is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

XIII. PUBLIC COMMENT

37. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days, for public notice and comment in accordance with the provisions of 28 C.F.R. §50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

XIV. EFFECTIVE DATE AND RETENTION OF JURISDICTION

38. This Consent Decree shall take effect upon entry by the Court; provided, however, that C&D shall be bound upon the lodging of this Consent Decree to comply with obligations of C&D specified in this Consent Decree as accruing upon lodging.

39. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XV. CONSENT DECREE MODIFICATIONS

40. Any material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect until filed with the Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

41. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

42. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Consent Decree and economic hardship or changed financial circumstances shall not serve as a basis for modifications of this Consent Decree.

XVI. TERMINATION

43. This Consent Decree shall terminate after C&D has demonstrated:

a. twelve consecutive months of complete compliance with the pretreatment effluent toxicity discharge limitations for Outfall 101 as specified in the AO using the sampling and treatment program set forth in paragraph 7.a.(1) herein;

b. twelve consecutive months of complete compliance with the discharge limitations for all outfalls via storm sewers to the Wabash River as specified in the Consent Decree Stormwater Concentration Limits using the sampling program set forth in paragraph 7.b.(1)(E) herein; and

c. current compliance with the CWA, the AO, the NPDES Permit, and the terms of the Consent Decree.

At such time, C&D shall notify EPA that C&D has completed its obligations under the Consent Decree and is in current compliance with the CWA, the AO, the NPDES Permit, and the terms of the Consent Decree. EPA shall respond to C&D's notice in a timely fashion. If EPA agrees, the Parties shall jointly move the Court for an order terminating this Consent Decree. If EPA does not agree, EPA shall provide in writing to C&D the basis for EPA's determination that C&D has not completed its obligations under this Consent Decree. If C&D disputes EPA's determination, the dispute shall be resolved in accordance with Section X (Dispute Resolution) of this Consent Decree.

XVII. SIGNATORIES/SERVICE

44. The undersigned representative of C&D and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

45. C&D hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified C&D in writing that it no longer supports entry of the Consent Decree.

46. C&D shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by certified mail on behalf of C&D with respect to all matters arising under or relating to this Consent Decree. C&D hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons.

XIX. FINAL JUDGMENT

47. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and C&D. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54.

SO ORDERED THIS _____ DAY OF _____, 2006.

United States District Judge

The Undersigned Parties enter into this Consent Decree in the matter of United States v. C&D Technologies, Inc., Civ. No.: 1:03-CV-0413 DFH-TAB (S.D. Ind.)

FOR THE UNITED STATES OF AMERICA

Date: 9-11-06

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division

GREGORY L. SUKYS
Virginia State Bar No. 24293
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-2068
Fax: (202) 353-0296

SUSAN W. BROOKS
United States Attorney

Date: 7-17-06

THOMAS E. KIEPER
Assistant United States Attorney
Southern District of Indiana
10 West Market St., Suite 2100
Indianapolis, IN 46204
Telephone: (317) 226-6333
Facsimile: (317) 226-5027

The Undersigned Parties enter into this Consent Decree in the matter of United States v. C&D Technologies, Inc., Civ. No.: 1:03-CV-0413 DFH-TAB (S.D. Ind.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Granta Y. Nakayama
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building, 2201A
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

Date: 6/12/06

Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago IL 60604

Date: 5-4-06

Larry L. Johnson
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago IL 60604
312-886-6609

Date: 5/4/06

The Undersigned Parties enter into this Consent Decree in the matter of United States v. C&D Technologies, Inc., Civ. No.: 1:03-CV-0413 DFH-TAB (S.D. Ind.)

FOR C&D TECHNOLOGIES, INC.

Date: 3/2/06

James Dee
Vice President, General Counsel & Secretary
C&D Technologies, Inc.
1400 Union Meeting Road
Blue Bell, PA 19422

Attorney for C&D Technologies, Inc.

Date: March 6, 2006

Kenneth H. Inskeep
Barnes & Thornburg LLP
11 S. Meridian St.
Indianapolis, IN 46204
Telephone: (317)236-1313
Fax: (317) 231-7433

Authorized to Accept Service on Behalf of Above-Signed Party:

C&D Technologies, Inc.
c/o National Registered Agents, Inc.
320 North Meridian Street
Indianapolis, IN 46204

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

C&D TECHNOLOGIES, INC.

Defendant.

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)

Civil Action No.

1:03-CV-413-DFH-TAB

CONSENT DECREE

EXHIBIT A

TABLE OF VIOLATIONS
C D TECHNOLOGIES, INC. POWERCOM DIVISION
200 West Main Street Attica, IN 47918-0279
NPDES Permit IN0049093 for Outfalls 001-006
IWP Permit INP000157 for Outfall 101
February 2003 - December 2005

EXHIBIT A: POST COMPLAINT VIOLATIONS

Date	Outfall	Parameter	Permit limit (mg/l or SU)	Reported Value (mg/l or SU)
4/24/2003	101	Pb-daily max	0.2	0.277
5/8/2003	101	Pb-daily max	0.2	0.666
5/14/2003	101	Pb-daily max	0.2	0.274
5/31/2003	101	Pb-monthly avg	0.1	0.35
7/30/2003	101	pH-daily max	9.00	9.20
9/30/2004	001	Pb-monthly avg	1	1.82
11/18/2004	001	Pb-daily max	2	5.05
11/30/2004	001	Pb-monthly avg	1	2.7
3/31/2005	001	Pb-monthly avg	1	1.1
4/20/2005	001	TSS-daily max	70	127
4/20/2005	001	Pb-daily max	2	2.2
4/20/2005	003	TSS-daily max	70	146
4/20/2005	004	TSS-daily max	70	174
4/30/2005	003	TSS-monthly avg	35	37.3
4/30/2005	004	TSS-monthly avg	35	46.5
5/7/2005	001	TSS-daily max	70	174
5/7/2005	001	Pb-daily max	2	2.75
5/31/2005	001	TSS-monthly avg	35	72.1
5/31/2005	001	Pb-monthly avg	1	1.3
8/8/2005	001	Pb-daily max	2	2.67
8/27/2005	001	Pb-daily max	2	3.8
8/31/2005	001	Pb-monthly avg	1	1.9

EXHIBIT A

EXHIBIT B

C & D TECHNOLOGIES, INC.		Number: 05-203
		Submitted By: P. Reich
RECORDS MANAGEMENT POLICY		Approved By: L. Hansen
Effective Date: 12/2000 Last Review Date: 02/10/2004	Supercedes No: PP-032	Page 1 of 5

1.0 PURPOSE

- 1.1 This policy describes the process and defines the responsibilities for maintenance and disposition of Environmental, Health and Safety Management System (EHS-MS) records. Records will be complete and accessible for audit and agency review.
- 1.2 This policy will help to assure consistent and thorough management of records and will provide redundant critical record files in the event of catastrophic record loss at a location.

2.0 SCOPE

- 2.1 This policy applies to all C&D manufacturing locations with environmental, health and safety programs required by company policy and/or federal, state or local authorities.
- 2.2 The data management requirements of this policy apply to all environmental, safety and health programs for which laboratory analyses are utilized to determine regulatory compliance.

3.0 DEFINITIONS

- 3.1 Records – Documents that contain performance results of the EHS-MS, such as, employee training records, audit/corrective action reports, stack test and monitoring results. Records also include documents that demonstrate conformity with EHS-MS requirements, including permits, licenses and regulatory approvals.

4.0 RESPONSIBILITIES

- 4.1 The Vice President of Environment, Safety and Health or his/her designee, shall be responsible for the development, implementation and ongoing management of this policy.
- 4.2 The plant manager and facility environmental, health and safety staff are responsible to assure compliance with this program at the C&D manufacturing locations.

C & D TECHNOLOGIES, INC.	Number: 05-203
RECORDS MANAGEMENT POLICY	Page 2 of 5

5.0 FACILITY FILE MAINTENANCE

- 5.1 All documentation and calculations applicable to the completion of routine reporting, compliance reports, permit applications and progress reports shall be maintained at the location as an attachment in the same file with the location copy of the completed final record.
- 5.2 Copies of all permits, permit conditions, agency inspection reports and agency correspondence shall be maintained on file at the affected location.
- 5.3 Records of all training and documentation of emergency evacuation drills shall be maintained on file at each facility.
- 5.4 All analytical data utilized to assess or demonstrate program compliance shall be maintained on file at the location in its original form.
- 5.5 Records shall be maintained in compliance with the "Recordkeeping Confidentiality and Access" policy, PP016 of the *Environmental, Safety & Health Policy and Procedures Manual*.
- 5.6 Records beyond three years of age may be placed in secure archival storage as long as access to these records can be obtained within five business days.

6.0 CORPORATE FILE MAINTENANCE

- 6.1 Draft copies of permit applications and reports to agencies such as compliance update reports, annual and biennial reports, SARA Tier II and Form R reports shall be copied to the corporate E, S&H Department with all supporting documentation and calculations for review prior to submittal to the appropriate agencies.
- 6.2 Copies of all permits, permit conditions and stack test results shall be forwarded to the corporate E, S&H Department upon receipt.
- 6.3 Copies of agency inspection reports shall be forwarded to the corporate E, S&H Department upon receipt. Notices of Violation, Citations or non-routine correspondence from agencies shall be mailed overnight or faxed, and follow-up telephone contact with the corporate E, S&H offices shall be made within 24 hours.
- 6.4 Final copies of all routine reporting to agencies (i.e., Discharge Monitoring Reports) shall be copied to the corporate E, S&H offices with the monthly reports.

C & D TECHNOLOGIES, INC.	Number: 05-203
RECORDS MANAGEMENT POLICY	Page 3 of 5

- 6.5 Updates of required compliance plans (i.e., OSHA Lead Compliance Plan, SPCC Plans, and Emergency Response Communication Call Sheet) shall be copied to the corporate offices whenever revisions are made.
- 6.6 All laboratories utilized for the analysis of any regulatory compliance parameters shall directly copy the corporate E, S&H offices with original copies of the analytical results. This requirement includes any laboratories utilized for the analysis of blood leads or air leads other than the West Allis Toxicological Laboratories or the C&D Material Test Laboratory. **This requirement does not apply to drug screens or medical monitoring beyond the routine blood lead, ZPP and Hbg.**
- 6.7 Record files beyond three years of age may be placed in secure archival storage as long as access to these records can be obtained within five business days.
- 6.8 The location of records maintained at Blue Bell is recorded in the File Maintenance Log, RS- 1836 available in the offices of each corporate EHS staff member.

7.0 PROGRAM APPLICABILITY ASSESSMENTS

- 7.1 For those OSHA and environmental regulatory requirements determined not to apply to a C&D location, a written analysis and opinion as to why the requirements do not apply shall be maintained on file at the facility. All calculations and supporting information used to make this decision shall be maintained on file with the assessment.

8.0 MONTHLY REPORTING

- 8.1 By the 10th of each month, each manufacturing facility is required to submit a report for the preceeding month to the corporate E, S&H Department. These reports shall at a minimum include the following:
 - a. The completed pages of the "E, S & H Monthly Summary Report" form that apply to that facility and copies of the applicable documents as requested in the form.
 - b. Copies of any routine reports to agencies.
 - c. Copies of accident investigation for accidents occurring during the previous month.

C & D TECHNOLOGIES, INC.	Number: 05-203
RECORDS MANAGEMENT POLICY	Page 4 of 5

- d. Updated compliance plan.corrective action reports responding to audit findings.
- e. At the plant's discretion, copies of any other documentation which shows program development or progress toward obtaining objectives and targets.

9.0 RECORDS RETENTION

9.1 Records associated with the environmental, health and safety programs shall be maintained on-site for at least the minimum retention times as provided in Attachment "A".

10.0 ATTACHMENTS

10.1 Attachment A – Record Retention Minimum Requirements.

11.0 APPROVAL

Signature on File
Vice President & General Counsel

12/15/2000
Date

05-203

Attachment A

RECORD RETENTION – MINIMUM REQUIREMENTS

TYPE OF RECORD

YEARS RETENTION

CORRESPONDENCE

General	2
Legal and Tax	Indefinitely
License	Indefinitely
Agency correspondence, inspection reports	10

INSURANCE/EMPLOYEE HEALTH RECORDS

Policies/Procedures (obsolete)	Indefinitely
Accident reports	6
OSHA recordkeeping (200 log, training records)	5
Employee medical records	30 beyond employment
Material Safety Data Sheets, worksite chemical lists	30
Employee workplace exposure summaries, Monitoring data, physicians opinions, analysis	30 beyond employment
Employee lead exposure monitoring, lead related Training, all chemical exposure monitoring	40 or 20 beyond employment
Insurance inspection reports	6
Group disability records	6
Safety reports	8
Claims after settlement (incl.: worker's compensation Records)	10
TSCA Allegations of Significant Adverse Reactions	30

PERSONNEL

Disability and sick benefits records	Indefinitely
Personnel files (Terminated)	Indefinitely

ENVIRONMENTAL

Permits, monitoring records	20
Hazardous waste shipping manifests, records, Waste analyses, disposal contracts	Indefinitely
Site assessments, data	20
Site and program audits	20
Internal policies and procedures	20

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

C&D TECHNOLOGIES, INC.

Defendant.

1:03-CV-413-DFH-TAB

EXHIBIT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

IN THE MATTER OF:) DOCKET NO: V-W-97-AO- 39
)
C & D POWERCOM) FINDINGS OF VIOLATION
ATTICA, INDIANA)
INDUSTRIAL USER) AND
&)
NPDES PERMIT NO.IN0049093) ORDER FOR COMPLIANCE
)
PROCEEDING UNDER SECTIONS 308)
AND 309(a) OF THE CLEAN WATER ACT)
AS AMENDED)

STATUTORY AUTHORITY

The following **FINDINGS** are made and **ORDER** issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (USEPA) under Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§1318 and 1319(a) et seq., duly delegated to the Regional Administrator, Region 5, and duly redelegated to the undersigned Director, Water Division, Region 5.

FINDINGS

1. 40 C.F.R. Part 403 established responsibilities of Federal, State, and local governments, industry and public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTW), or may contaminate sewage sludge.
2. C & D PowerCom (CDPC),(aka C & D Power Systems, Inc, aka C & D Charter Power Systems), a person within the meaning of Section 502(5) of the CWA, owns and operates the manufacturing facilities located at 200 West Main Street, Attica, Indiana.
3. CDPC is engaged in the manufacture of motive and standby power lead acid batteries.



Manufacturing processes include casting, pasting, plate processing, battery assembly, welding, dry charging, wet charging, and battery washing.

4. Based on available information and belief, CDPC discharges an average of 19,000 gallons per day (GPD) to the City of Attica's sewerage system, through Outfall 101. The discharge contains process and sanitary wastewater. All of the process waste streams enter the Pretreatment system before combining with dilution flows at an outside lift station to the city sewer.
5. The City of Attica is the owner and operator of Attica POTW which provides collection and treatment of waste waters from domestic sources and industrial users.
6. CDPC's waste-water discharges contain lead. Lead is a pollutant as that term is defined in 33 U.S.C. § 1362(6).
7. CDPC's facility is a source of "indirect discharge" and an "industrial user" or "user" as those terms are defined in 40 C.F.R. § 403.3(g) and (h).
8. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), provides that it is unlawful to operate any source in violation of any pretreatment standards, including the general and specific prohibitions and local ordinance limits, if available. This includes any pollutant, including lead, released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW operations [40 C.F.R. Part 403.5(b)(4)].
9. Pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, CDPC, as an industrial user, is subject to the National Pretreatment Standards under 40 C.F.R. Part 403.5. These standards include general prohibitions, specific prohibitions and local limits. The process discharge from CDPC is subject to the existing Source Battery Manufacturing Standards,

Subcategory C - Lead [40 C.F.R. Part 461.34]. The discharges from the following

process flows are regulated by the Standard. They include: (i) Open Formation -

Dehydrated; (ii) Closed Formation - Wet; (iii) Battery Wash - Detergent; (iv) Mold

Release Formulation; and (v) Miscellaneous Waste-water Streams (from electroplating).

Because there are no limits included in the Battery Manufacturing Standard for the Closed Formation - Wet process, no categorical allowance can be given.

10. 40 C.F.R. Part 403.12(a) defines "Control Authority" as (1) the Publicly Owned Treatment Works (POTW), if the POTW's submission for its pretreatment program, defined in 40 C.F.R. Part 403.3(t)(1), has been approved in accordance with the requirements of 40 C.F.R. 403.11; or (2) the Approval Authority if the submission has not been approved.
11. Approval authority as defined in 40 CFR 403.3© is the Regional Administrator in a NPDES State without an approved State Pretreatment program.
12. Attica POTW pretreatment program has not been approved in accordance with the requirements of 40 C.F.R. § 403.11 and Indiana is a NPDES State without an approved State Pretreatment Program, hence, the USEPA is the Control Authority.
13. Pursuant to the requirements in 403.6 and paragraph 9 of the Findings, above, Indiana Department of Environmental Management (IDEM) issued CDPC a permit to comply with the following limits at the end of process.

Parameter	Unit	Discharge Limit	
		Monthly Average	Daily Maximum
Lead [Pb]	mg/l	0.10	0.20
Copper [Cu]	mg/l	0.49	0.93
pH	s.u.	N/A	6-9

14. Based on the sampling results obtained in monthly Discharge Monitoring Reports during 1997, CDPC exceeded the limits for lead, cited in paragraph 13 of the Findings, above, for Outfall 101. See attachment No. 1 (Table of Violations) for exceedances of the limits for discharges to the POTW.
15. Based on the Findings, paragraphs 13 and 14, above, and attachment No. 1 to this Order, USEPA finds that CDPC for the period from January 1997 through June 1997 has discharged excess pollutants into the Attica POTW which can contribute toward interference with, or pass through of, the treatment system. This is in violation of Section 307 of the CWA and the implementing regulation of 40 C.F.R. Part 403.
16. The violations cited in paragraph 14 of the Findings, above, are expected to continue in the future pending corrective actions to be taken by C & D PowerCom.
17. All regulations concerning CDPC's discharges to the City of Attica POTW are enforceable by USEPA pursuant to 40 C.F.R. Part 403.5(d) and Section 307(d) of the CWA. Section 309 of the Clean Water Act, 33 U.S.C. Section 1319, authorizes the administrator to issue a compliance order or to commence a civil action for appropriate relief to any person who is in violation of the Clean Water Act.
18. National Pollutant Discharge Elimination System (NPDES) Permit No. IN 0049093 (Permit) was issued to C & D Power Systems, Inc., (aka C&D PowerCom, or CDPC, aka C & D Charter Power Systems) (Permittee), on February 1, 1989 and amended on November 1, 1989, by the Indiana Department of Environmental Management (IDEM). The permit expired November 30, 1993; however, based on state requirements it remains in full force and effect until a new permit is issued.

19. Based on available information and belief, CDPC has six discharges into the City of Attica storm sewers. Outfall Nos. 001 and 002 discharge non-contact cooling water and storm runoff water. Outfall Nos. 003, 004, 005, and 006 discharge storm runoff water. The average volume of waste water discharged is as follows: 001 - cooling water only, 0.02 mgd, with storm water 0.023 mgd; 002 - cooling water only, 0.013 mgd, with storm water 0.015 mgd; 003 - 0.042 mgd; 004 - 0.047 mgd; 005 - 0.002 mgd, and 006 - 0.043 mgd. The average plant discharge is 0.172 mgd. All waste waters receive no treatment prior to discharge. The receiving stream for Outfall Nos. 001, 002, 003, 004, 005, and 006 is the Wabash River via a city storm sewer in accordance with its National Pollutant Discharge Elimination System (NPDES) Permit No. IN 0049093, through outfalls 001, 002, 003, 004, 005, and 006.
20. The Attica POTW discharges pollutants to the Wabash River in Fountain County, pursuant to the terms and conditions of its NPDES Permit No. IN 0020222.
21. The Wabash River is a "navigable water" as this term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
22. For the 1989 Permit, numerical limitations were established in Part I of the NPDES Permit for Outfall(s) 001-006 during the effective period of the 1989 Permit.
23. Pursuant to the requirements in paragraph 22 of the Findings, above, and in accordance with its NPDES permit, CDPC is required to comply with the following limits coexisting for the discharges from Outfall 001, 002, 003, 004, 005, and 006:

Parameter	Unit	Discharge Limit Monthly Average	Discharge Limit Daily Maximum
Total Suspended			

Solids [TSS]	mg/l	35.0	70.0
Lead [Pb]	mg/l	1.0	2.0
pH	s.u.	N/A	6-9

24. Based on the sampling results obtained during 1992, 1993, 1994, 1995, 1996, and 1997, monthly Discharge Monitoring Reports(DMRs), CDPC exceeded the limits for lead and/or Total Suspended Solids, cited in paragraph 22 of the Findings, above, for Outfall Nos. 001, 002, 003, 004, 005, and 006. See attachment No. 2(Table of Violations) for exceedances of the limits for discharges at Outfall Nos. 001 through 006.
25. Failure to comply with the Permit requirements, as referenced in Paragraphs 22 and 23 of the Findings, constitute violations of the terms and conditions of the Permit and Section 301(a) of the Act.
26. Section 309 of the Clean Water Act authorizes the Administrator to issue a Compliance Order or to commence a Civil Action for appropriate relief against any person who is violation of the Act.

ORDER

BASED ON THE FOREGOING FINDINGS, and pursuant to the authority vested in the Administrator, U.S. Environmental Protection Agency, under Section 309(a)(3) of the CWA and by him duly delegated to the Regional Administrator, Region 5, which authority has been duly redelegated to the undersigned, **IT IS HEREBY ORDERED:**

1. That within thirty (30) days of receipt of this Order, C & D PowerCom (CDPC) shall achieve and maintain compliance with all applicable requirements of the CWA; the general pretreatment regulations for existing and new sources of pollution at 40 C.F.R.

Part 403; all effluent limitations for industrial users contained in Attica General Ordinance(Sewer Use Ordinance) , as amended; the terms, conditions, and requirements of its Pretreatment Permit No. INP 000157, and the terms, conditions, and requirements of its NPDES Permit No. IN 0049093, issued by IDEM and currently effective..

2. That CDPC shall submit to the Director, Water Division, Region 5, USEPA, Attention: James Coleman(WC-15J), at 77 West Jackson Boulevard, Chicago, Illinois 60604, with copies to the Indiana Department of Environmental Management (IDEM), Water Enforcement Section, P.O. Box 6015, Indianapolis, Indiana 46205-6015, Attention: Mark Stanifer and Attica Wastewater Treatment Plant, City Attica, 305 E. Main St., Attica, Indiana 47918, Attention: Larry Sible, Operator.

a. Within ten (10) days of receipt of this Order, a written statement of CDPC's intent to comply with this Order.

b. Within ten (10) days of receipt of this Order, copies of CDPC's monthly discharge monitoring reports for the period from August 1992 to the present pursuant to the NPDES Permit, and December 1996 to the present pursuant to the Pretreatment Permit, and thereafter, on the monthly basis, postmarked no later than the 28th day of the month following the completed monthly reporting period until ordered by USEPA to cease.

c. Within twenty (20) days of receipt of this Order, a copy of a current schematic flow diagram of the total water system which is responsible for the discharge of pollutants from Outfall 101 into the Attica POTW, and from Outfalls 001, 002, 003, 004, 005, and 006 into the Wabash River. The diagram shall contain the following information:

- 1). Show all general and industrial process areas showing the internal individual processes and waste abatement practices or waste treatment unit operations. Please include any treatment unit operations that are not in use.
- 2). Show locations and identify all segregated influent and effluent flows (both liquids and solids), recycling lines, water softener process, boiler blowdown, cooling water, cooling tower blowdown, steam condensates and locations of waste-treatment chemicals added along with their

identities, quantities, and frequencies. Please include the locations of sampling points used by CDPC and City of Attica and the assigned sampling points or numbers.

- 3). On the requested schematic flow diagram, show the locations of all spent cooling water and steam condensate discharged to and/or by-passing the waste treatment facilities. Please indicate the quantity of cooling water and steam condensate that comes in contact with the recooling medium or process materials, and its treatment, if any.
- 4). The process diagram or the flow diagram shall include a water balance (i.e., all sources of water coming into the facility should be identified and measured, and balanced against all water used, lost or discharged from the facility).

If this information has been provided as part of a permit application please submit a copy of the complete application and certify that this information is representative of the company's current processes.

- d. Within twenty (20) days of receipt of this Order, copies of all correspondence (including enforcement documents) between CDPC and IDEM, and or between CDPC and the City of Attica, since August 1992 that are related to compliance or noncompliance with Pretreatment Standards, prohibited discharge standards, CDPC's industrial discharge permit, CDPC's NPDES permit, and the City of Attica's General Sewer Ordinance.
- e. Within thirty (30) days of receipt of this Order, a written detailed explanation of the reasons for the excursions of: the limits (lead) for Outfall 101; the effluent limits (Total Suspended Solids) for Outfalls 001, 002, 003, 005, and 006; and the effluent limits (lead) for Outfalls 001, 003, 004, and 006, as detailed in paragraphs 14 and 24 of the Findings, above.
- f. Within thirty (30) days of receipt of this Order, a detailed description of corrective actions or steps CDPC has taken and/or intends to take to achieve compliance with the requirements specified in paragraphs 13 and 23 of the Findings, above. The report shall include, but is not limited to, a summary of additional equipment, and other measures that are needed to achieve consistent compliance, and the cost of such measures, both capital cost and annual operation and maintenance cost. In case of noncompliance, the report shall contain an implementation schedule, needed to achieve compliance.

If CDPC has already provided the City of Attica or the IDEM with copies of the above documents, it need not include these materials in its submission to Attica or IDEM.

3. CDPC shall achieve compliance with the aforementioned Industrial User and NPDES permits within 120 days (or any other time period you think is appropriate) of receipt of this Order.
4. That the information requested herein must be provided notwithstanding its possible characterization as confidential information or trade secrets. However, should CDPC request confidential treatment of any submitted information, to the extent that such information is determined by this Agency to constitute methods, processes or other business information entitled to protection as trade secrets, same will be maintained as confidential. A request for confidential treatment must be made when the information is provided, or such protection will not be accorded by the Agency.
5. That written statements submitted pursuant to this Order must be notarized and returned under an authorized signature certifying that all statements contained therein are true and accurate to the best of the signatory's knowledge and belief. Should the signatory find at any time after submittal of the requested information, that any portion of such statement(s) certified as true is false or incorrect, the signatory shall so notify Region 5. (See attachment 3, "Authority and Confidentiality Provisions.") The USEPA has the authority to use the information requested herein in an administrative, civil or criminal action.

Neither issuance of this Order by the USEPA nor compliance with this Order by C & D PowerCom, shall be deemed to relieve CDPC of liability for any penalty, fine, remedy or sanction authorized to be imposed pursuant to Section 309(b), (c), (d) and/or (g) of the Clean Water Act, as amended, for any violation of pretreatment regulations and/or the terms and conditions of the

Permittee's NPDES Permit or other applicable requirements of the Clean Water Act, including but not limited to any and all violations addressed in this Order. The USEPA specifically reserves the right to seek any or all of the remedies specified in Section 309(b), (c), (d) and/or (g) of the Clean Water Act for each and every violation cited in this Order.

Jo Lynn Traub
Director, Water Division
U.S. Environmental Protection Agency
Region 5

Sept. 26, 1997
Date

ATTACHMENT 1

TABLE OF VIOLATIONS

C & D Powercom

INP000157

Outfall 101

DATE	Parameter	Permit Limit Mo Avg	Permit Limit Daily Mx	Unit	Reported Mo Avg Values	Reported Daily Mx Values	% Exceedance Mo Avg	% Exceedance Daily Mx	Days of Violations
013197	LEAD TOTAL RECOVERABLE	0.1	0.2	MG/L	0.1	0.22		10 %	1
022897	LEAD TOTAL RECOVERABLE	0.1	0.2	MG/L	0.17	0.44	70 %	120 %	2
033197	LEAD TOTAL RECOVERABLE	0.1	0.2	MG/L	0.94	3.29	840 %	1545 %	2
043097	LEAD TOTAL RECOVERABLE	0.1	0.2	MG/L	0.16	0.47	60 %	135 %	2
063097	LEAD TOTAL RECOVERABLE	0.1	0.2	MG/L	0.29	0.93	190 %	365 %	2

ATTACHMENT 2 - TABLE OF VIOLATIONS

C&D POWER SYSTEMS, INC.
Attica, Indiana
IN0049093

Outfall	Date	Violated Parameter	Reported Units	Reported Min.	Reported Avg.	Reported Max	# of days in violation
001A	33193	SOLIDS, TOTAL SUSPENDED	MG/L			82.0	1
001A	13196	LEAD, TOTAL (AS PB)	MG/L			2.6	1
002A	22894	SOLIDS, TOTAL SUSPENDED	MG/L		69.0	242.0	2
003A	103192	SOLIDS, TOTAL SUSPENDED	MG/L		242.0	242.0	2
003A	113092	SOLIDS, TOTAL SUSPENDED	MG/L		61.0		0
003A	33193	SOLIDS, TOTAL SUSPENDED	MG/L		153.0	418.0	2
003A	43093	SOLIDS, TOTAL SUSPENDED	MG/L		208.0	404.0	0
003A	13194	SOLIDS, TOTAL SUSPENDED	MG/L		202.0	202.0	2
003A	13196	SOLIDS, TOTAL SUSPENDED	MG/L		95.0	95.0	2
003A	33196	SOLIDS, TOTAL SUSPENDED	MG/L		56.0		0
003A	123196	SOLIDS, TOTAL SUSPENDED	MG/L		51.4		0
003A	22897	SOLIDS, TOTAL SUSPENDED	MG/L		47.0	84.0	2
003A	33193	LEAD, TOTAL (AS PB)	MG/L		1.1	2.1	2
003A	13196	LEAD, TOTAL (AS PB)	MG/L		1.97		1
003A	22897	LEAD, TOTAL (AS PB)	MG/L		1.1	1.4	1
003A	33197	LEAD, TOTAL (AS PB)	MG/L		1.03		1
004A	63094	LEAD, TOTAL (AS PB)	MG/L		2.04	2.04	1
004A	13195	LEAD, TOTAL (AS PB)	MG/L		47.3		1
005A	103193	SOLIDS, TOTAL SUSPENDED	MG/L		37.0		1
005A	13196	SOLIDS, TOTAL SUSPENDED	MG/L		83.4	83.4	2
005A	103196	SOLIDS, TOTAL SUSPENDED	SU	3			0
006A	103196	PH	MG/L		37.0		1
006A	13196	SOLIDS, TOTAL SUSPENDED	MG/L		105.0	105.0	2
006A	123196	SOLIDS, TOTAL SUSPENDED	MG/L		36.0		0
006A	33197	SOLIDS, TOTAL SUSPENDED	MG/L		1.03		1
006A	103193	LEAD, TOTAL (AS PB)	MG/L		1.2		1
006A	43094	LEAD, TOTAL (AS PB)	MG/L		1.1		1
006A	63094	LEAD, TOTAL (AS PB)	MG/L		1.7		1
006A	103196	LEAD, TOTAL (AS PB)	MG/L		4.6	4.6	2
006A	123196	LEAD, TOTAL (AS PB)	MG/L		1.4		1
006A	33197	LEAD, TOTAL (AS PB)	MG/L				1